



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

MASTER AND SERVANT—NONCOMPLIANCE WITH FACTORY LAW.—ASSUMPTION OF RISK.—Plaintiff, employed in the lumber mill of defendant, was required to work between two parallel sets of rollers, one of which, composed of what is known as "live rollers," was kept in motion by the motive power of the mill, by means of a steel shaft on the side next to where plaintiff worked. The shaft was uncovered and unprotected in violation of a statute requiring operators of mills to place safeguards over shaftings and other dangerous devices, and providing a penalty for failure to do so. While performing his regular duties, plaintiff's clothing caught on the shaft, drawing him down upon it and permanently injuring him. *Held*, that defendant is liable, not having complied with the statutory requirements, and could not avail itself of the doctrine of assumed risk. *Hall v. West & Slade Mill Company* (1905), — Wash. —, 81 Pac. Rep. 915.

This case affirms the decision in *Green v. Western American Co.*, 30 Wash. 87, 70 Pac. 310. Three of the judges dissented. It is agreed on all sides that, in the absence of statute and upon common law principles, the plaintiff should have been held to have assumed the risk. Did the statute in question change the common law doctrine of assumed risk? The following cases seem to support the principal case: *Baddeley v. Earl Granville*, 19 Q. B. D. 423, — 428, 17 Eng. Rul. Cas. 212; *Britton v. Great Western Cotton Company*, L. R. 7 Ex. 130-139, 19 Eng. Rul. Cas. 42; *Narramore v. Cleveland etc. Ry. Co.*, 96 Fed. 298, 37 C. C. A. 499, 48 L. R. A. 68; *Monteith v. Kokomo Wood Enameling Co.*, 159 Ind. 149, 64 N. E. 610, 58 L. R. A. 944; *Ashman v. F. & P. M. R. R. Co.*, 90 Mich. 567. Against the holding of the principal case are: *Nottage v. Sawmill Phoenix*, 133 Fed. 979; *Knisley v. Pratt*, 148 N. Y. 372, 42 N. E. 986, 32 L. R. A. 367; *Martin v. C., R. I. & P. Ry. Co.*, 118 Ia. 148, 91 N. W. 1034, 59 L. R. A. 608, 96 Am. St. Rep. 371. See also LABATT, **MASTER AND SERVANT** (1904), §§ 649 et seq. The present case must be distinguished from that class of cases arising under Employers' Liability Acts in which the employer's duty is expressed merely in general terms and no absolute or specific duty is enjoined. *Thomas v. Quartermaine*, 18 Q. B. D. 685; *O'Maley v. South Boston Gas Light Company*, 158 Mass. 135, 32 N. E. 1119, 47 L. R. A. 161; *Birmingham Railway v. Allen*, 99 Ala. 359. The principal case is also distinguishable from those arising in jurisdictions where a statute expressly provides, that in case the employer fails to comply with its terms, an employé shall not be deemed to have assumed the risk thereby occasioned, e. g., the act of Congress making the use of automatic couplings on a railroad train compulsory. See U. S. Comp. St. 1901, Vol. 3, p. 3176. Again many cases, notably those decided in Illinois, hopelessly confuse the doctrine of assumed risk with that of contributory negligence. *Litchfield Coal Company v. Taylor*, 81 Ill. 590; *Catlett v. Young*, 143 Ill. 74, 32 N. E. 447; *Landgraf v. Kuh*, 188 Ill. 484, 59 N. E. 501. The distinction between the two is a vital one. In *Railway Company v. Baker*, 33 C. C. A. 468, 91 Fed. 224, where the right of action was based on the act of Congress providing expressly against the assumption of risk by the employé, the court held, that notwithstanding the provision, the defendant company was at liberty to show the contributory negligence of the plaintiff. It is believed that much of the apparent conflict in the cases is reconcilable in the light of the above considerations.